



Federal Communications Commission
Washington, D.C. 20554

DA 07-4981
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Media Access Project
c/o Andrew Jay Schwartzman, President and CEO
1625 K Street, NW
Washington, DC 20006

Malara Broadcast Group of Duluth Licensee LLC
c/o Stuart A Shorenstein, Esq.
Wolf, Block, Schorr and Solis-Cohen, LLP
250 Park Avenue
New York, NY 10177

Re: Application for renewal of license
for KDLH-TV,
Duluth, Minnesota
File No. BRCT-20051201BNK
Facility ID No. 4691

Gentlemen:

This is in reference to the above-captioned application for renewal of license for KDLH-TV, Duluth, Minnesota. On April 11, 2006, The Media Access Project ("MAP") filed an informal objection to the renewal application and Malara Broadcast Group of Duluth Licensee LLC ("Malara") filed an opposition on April 19, 2006. For the reasons set forth below, we deny the informal objection.

MAP points out that it has previously expressed its support for an Application for Review filed on January 13, 2005 by KQDS Acquisition Corp. and WDIO-TV, LLC against the grant of an assignment application consenting to the assignment of KDLH to Malara¹. MAP asks that action on KDLH's renewal application be deferred until the Commission acts on the pending Application for Review and that the renewal application be consolidated with the Application for

¹ File No. BALCT-20040504ABU

Review and referred to the full Commission. MAP also asks that the renewal application be dismissed or designated for evidentiary hearing.

MAP argues that renewal of KDLH's license would be against the public interest for the same reasons that the assignment application that is the subject of the Application for Review should not have been granted. In its July 10, 2005 letter in support of the Application for Review, which MAP attaches to its informal objection, MAP argued that the Bureau's grant of the application for consent to the assignment of KDLH to Malara should be overturned. MAP stated that the Bureau's action authorizes the transparent evasion of the Commission's duopoly rules because of agreements between Malara and another station in KDLH's market.

In opposition, Malara urges rejection of MAP's request on several grounds. It argues that the objection was not timely filed, that MAP's arguments are unrelated to the statutorily articulated standard for review of renewal applications, that consideration of MAP's request to alter existing Commission policy with respect to attribution of shared services arrangements is inappropriate in a renewal proceeding, and that the allegations are repetitive because the same issues are already before the Commission.

In assessing the merits of a petition to deny or informal objection, we follow a two-step analysis. First, we determine whether it makes specific allegations of fact which, if true, would demonstrate that grant of the application would be *prima facie* inconsistent with the public interest. If so, then we proceed to examine and weigh all of the material before us, including the renewal applicant's submissions, to determine whether there is a substantial and material question of fact requiring resolution in a hearing. See Sections 309(d)(1) and (2) of the Communications Act of 1934, as amended ("the Act")², as explained in *Astroline Communications Co. v. FCC*, 857 F.2d 1556 (D.C.Cir. 1988). If the facts are not disputed, but disposition turns on inferences and legal conclusions to be drawn from facts already known, a hearing is unnecessary. *Stone v. FCC*, 466 F.2d 316, 323 (D.C.Cir. 1972).

We will deny the informal objection because it fails to make specific allegations of fact which, if true, would demonstrate that grant of the application would be *prima facie* inconsistent with the public interest. Section 309(k)(1) of the Act states that the Commission shall grant a license renewal application if it finds that (a) the station has served the public interest, convenience, and necessity; (b) there have been no serious violations by the licensee of the Communications Act or Commission rules and regulations; and (c) there have been no other violations by the licensee of the Act or Commission rules or regulations which, taken together, would constitute a pattern of abuse.³

² 47 U.S.C. §§309(d)(1) and (2).

³ 47 U.S.C. §309(k)(1).

MAP makes no specific allegations that Malara has failed to serve the public interest or that there have been violations of the Act or the Commission's rules. Malara acquired KDLH pursuant to Commission consent to do so. Although the Application for Review and MAP argue that such consent should not have been given, KDLH is not operating against the public interest or in violation of the Act or the rules simply because MAP disagrees with the Bureau's decision to grant the assignment application. MAP does not allege that KDLH has failed to disclose the existence of agreements which it finds offensive. On the contrary, by all appearances, KDLH is operating consistent with the authority granted by the Commission.

ACCORDINGLY, IT IS ORDERED, that the informal objection to KDLH-TV's renewal application, which remains pending at this time, **IS DENIED**.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Charles R. Naftalin, Esq.
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